

FILED
08 JUN -2 PM 1:56
RICHARD W. WHEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 NAME: DERRICK D. SIMS
2 CDC NO.: J-20913
3 CELL NO.: 99-221, PO BOX 7540
4 CRESCENT CITY CA 95531

5 Plaintiff In Pro Se

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 (Insert Court Name And District)

11 In the matter of)

12 DERRICK SIMS)
13 Plaintiff)

14 vs)

15 MICHAEL SOYRE ET AL.)
16 Defendants.)

CASE NO.: CV-08 16915BA

EX PARTE MOTION FOR ASSIGNMENT
OF COUNSEL, AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION.

17 TO: THE ABOVE-ENTITLED COURT;

18 I

19 INTRODUCTION

20 1. COMES NOW, DERRICK SIMS J-20913, plaintiff in the
21 above-entitled matter, pursuant to 28 USC § 1915(d), and moves
22 the Court for assignment of counsel to assist plaintiff in
23 further litigation of this action.

24 2. This Motion is based upon the forthcoming facts,
25 memorandum of points and authorities, the attached declaration
26 of plaintiff, as well as all other papers currently on file in
27 this matter.
28

II

STATEMENT OF FACTS

3. Plaintiff is currently incarcerated at the California
STATE PRISON... PELICAN BAY STATE PRISON.

4. Plaintiff currently lacks any meaningful source of
income to utilize in employing services of Counsel to provide
experienced legal advice and skills to further the litigation of
this case.

5. Plaintiff only has limited access to a law library and
other materials necessary to facilitate proper legal research;
the time permitted to study available legal materials is
extremely limited during access periods.

6. Plaintiff is a layman at the law with little experience
in the complex and confusing methods of legal research,
reasoning, and writing. Plaintiff has virtually no knowledge of
proper Federal Procedural Rules, Rules of Court, or Rules of
Civil Procedure which are a fundamental necessity and of
critical importance to proceed with important discovery and in
obtaining certain types of evidence plaintiff believes
defendants currently possess or have access to.

7. Plaintiff does not know what papers should now be filed
or submitted to the court or defendants, to further the
litigation of this case. Plaintiff has attempted to read and
understand the Federal Rules of Civil Procedure, but plaintiff
has been left predominantly confused regarding appropriate
action at this point.

8. Plaintiff sincerely desires to pursue the above-entitled
action and seek the relief requested in the original complaint

1 previously filed in this matter.

2 9. Plaintiff has limited formal education and no education
3 in the law. Plaintiff does not understand or comprehend complex
4 legal reasoning, standards, or language when attempting to study
5 case precedent, codes, statutes, and other legal publications.
6 Plaintiff was required to enlist assistance of fellow prisoners
7 with limited knowledge of the law, in order to prepare and file
8 the pleadings previously filed with the court; including this
9 current Motion For Assignment Of Counsel. The assistance of
10 fellow prisoners is nearly non-existent due the confinement
11 conditions of my current housing unit; in fact, it is primarily
12 due to pre-printed forms available in the law library plaintiff
13 was able to submit the instant Motion and other papers on file
14 in this action.

15 III

16 REASONS THE COURT SHOULD ASSIGN COUNSEL

17 10. Plaintiff is unable to employ counsel; (see Forma
18 Pauperis application on file in the above-entitled action.)

19 11. The issues involved in this matter are complex and it
20 is difficult for plaintiff to understand how to further proceed
21 to press plaintiff's claims to a final resolution.

22 12. The issues involved necessitate serious and complex
23 discovery proceedings to be undertaken by plaintiff in order to
24 prepare for further proceedings on summary judgment or
25 preparation for trial.

26 13. The prison limits plaintiff's access and time with law
27 books and other legal materials necessary to facilitate proper
28 legal research and drafting of papers.

1 14. Plaintiff has very little legal experience and
2 knowledge of law.

3 15. The interests of justice and the economy of judicial
4 resources would be best served by assignment of counsel to
5 assist plaintiff in this action.

6 DATED: 5/29/08

Derrick Sims 5-20913
(Signature)

DERRICK SIMS
(Print Name)

9 Plaintiff In Pro-Se

10
11 /// SEE ALSO *Ulmer v Chancellor*, 691 F.2d 209, 213 (5th Cir.
12 1982) (Appointment of counsel appropriate only in exceptional
13 circumstances; on remand district court should consider
14 complexity of case, indigent's ability to represent himself,
15 indigent's ability to investigate case, and possibility
16 of conflicting testimony requiring skill in presentation
17 of evidence and in cross examination...

18 /// ALSO. *Tucker v. Randall*, 948 F.2d 388, 391 (7th Cir
19 (1991) in re: claim of medical. of deliberate indifference
20 to serious medical needs etc. etc.
21

MEMORANDUM OF POINTS AND AUTHORITIESARGUMENT

Plaintiff points out there is clear statutory authority under which the District Court may appoint or assign counsel to assist pro se plaintiff in litigating this civil action.; (28 USC § 1915(d); (in relationship to 42 USC § 1983); also see Norris v. Wainwright, (1977) 588 F.2d 130, 133-134; ("fundamental fairness" is the test by which the decision to appoint assistance of counsel rests.)

Another primary consideration is the right of every litigant, rich or poor, to equal consideration before the courts; (Coppedge v. United States, (1962) 369 U.S. 438, 456.) Even without statutory authority federal courts, in a proper situation or prevailing circumstances of a case, may assign counsel to assist an indigent state prisoner plaintiff under the court's supervisory powers and sound discretion; (McNabb v. United States, (1943) 318 U.S. 332, 346-347; also see The Supervisory Power of the Federal Courts, 76 Harv. L. 1656.)

Some courts hold counsel is not necessary "unless the circumstances of the particular case are such that counsel would be vital to attain due process, or access to the courts." (Eskridge v. Rhay, (1965) 345 F.2d 778, 782; Anderson v. Heinze, (1958) 258 F.2d 479, 482, 484; Dillon v. United States, (1962) 307 F.2d 445, 447; Bounds v. Smith, (1977) 430 U.S. 817, 823-832.)

Plaintiff is well aware the United States Supreme Court and Congress have never held a civil litigant has a right to have counsel assigned for assistance in pursuing claims in the

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1 courts. However, the question of whether or not to assign
2 counsel is solely within the discretion of the court and that
3 sound discretion "requires that counsel be appointed at least in
4 some cases." (United States v. Wilkens, (1964) 338 F.2d 404,
5 406; United States v. Wilkens, (1960) 281 F.2d 707, 715.)

6 Many entanglements and unnecessary delays and expense to
7 the judiciary and parties may be avoided by assignment of
8 counsel; (Taylor v. Pegelow, 335 F.2d 147, 150.) At least one
9 District Court has viewed in the context of habeas corpus that,
10 unless the application could be dismissed "summarily," counsel
11 should be assigned to assist the impoverished "layman prisoner";
12 (Cullins v. Crouse, (1965) 348 F.2d 887, 889.)

13 In civil rights actions under 42 USC § 1983, to redress
14 injuries inflicted by individuals "acting under color of state
15 law", courts have considered assignment of counsel to be of
16 fundamental importance where the plaintiff (prisoner civil
17 litigant) must conduct discovery to pursue the case and the
18 plaintiff cannot conduct the discovery himself; (Murrell
19 v. Bennett, (1980) 615 F.2d 306, 309.) Perhaps more
20 importantly, "summary judgment" proceedings against a prisoner
21 plaintiff, unable to secure discovery to ward off such judgment,
22 cannot be permitted against a layman prisoner plaintiff unaware
23 of proper opposition to such proceedings; (Ibid, at 310-311.)

24 In this case, as stated in the foregoing facts and
25 forthcoming attached declaration, plaintiff has clearly
26 demonstrated he cannot proceed further in litigating this
27 meritorious proceeding without assistance from someone
28 knowledgeable in the intricacies entailed in pursuit of this

1 type of proceeding.

2 CONCLUSION

3 WHEREFORE, the foregoing reasons and any others deemed
4 appropriate by the court, plaintiff prays the court assign
5 counsel to in further pursuit of this action.

6 DATED: 5/29/08. Respectfully submitted,

7 
8 (Signature)

9 DERRICK SIMS
10 (Print Name)

11 Plaintiff In Pro-Se
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DECLARATION SUPPORTING MOTION FOR COUNSEL

1 I, DERRICK D SIMS ^{J-20913}, declare the following:

2 1. I am the plaintiff in the above-entitled action.

3 2. I am currently a state prison inmate with no meaningful
4 source of income to utilize in employing assistance of counsel.

5 3. My personal attempts to read law books, Rules of Court
6 and Court Procedures have resulted in utter confusion and
7 furthered my inability to comprehend what action I should take
8 next to further prosecute this action.

9 4. I have had to obtain the assistance of other prisoners,
10 who appeared to have some knowledge of law, under very difficult
11 and restrictive conditions to assist me in writing and filing
12 the papers currently on file before the court.

13 5. I HAVE A GRADE POINT LEVEL OF 2.5 AND A READING
14 SCORE OF 3.3 SEE EXHIBIT (E) OF COMPLAINT ON FILE
15 TO CONFIRM, I.D. AT (CASE FACTORS) (GPL.) READING LEVEL.)

16 6. I HAVE SINCE BEEN MOVED AWAY FROM THOSE
17 WHO ASSISTED ME.

18 7. _____

19 I declare under penalty of perjury under the laws of the
20 State of California that the foregoing is true and correct and
21 that this declaration was executed on (date) 5/29/08,
22 at (place) PELICAN BAY STATE PRISON, California.

23 Derrick Sims
24 (Signature)

25 Plaintiff In Pro-Se

PROOF OF SERVICE BY MAIL

(C.C.P. section 101a #2015.5; 20 U.S.C. section 1746)

I, DERRICK D. SIMS, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below entitled action.

My Address is: P.O. Box 7500; Crescent City, CA 95531.

On the 5 day of 29, in the year of 2008, I served the following documents: (set forth the exact title of documents served)

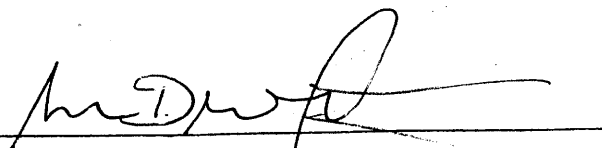
EX PARTE MOTION FOR ASSIGNMENT OF COUNSEL, and
Supporting MEMORANDUM of points and authorities
and DECLARATION.

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United states mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

Office of the Clerk,
U.S. District Court
Northern California District
450 Golden Gate Ave.
San Francisco CA. 94102-3483

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5 day of 29, 2008.

Signed: 

(Declarant Signature)

NAME: Sims, Devric

CDC NO: J-20913 HOUSING: D 9 - 221

PELICAN BAY STATE PRISON
P.O. BOX 7500
CRESCENT CITY, CA 95532

PELICAN BAY STATE PRISON
5905 Lake Earl Dr
Crescent City CA 95532



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MAY 30 2008

U.S. Northern Dist. of Ca.
U.S. Courthouse
450 Golden Gate Ave.
San Francisco, Ca. 94102-3483

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